In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 492

ONE 1951 FORD PICK-UP ¾ TON TRUCK, ENGINE NO. F2RICS 13966; HAMMONTON INVESTMENT AND MORTGAGE CO., *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 60-61) is reported at 199 F. 2d 450.

JURISDICTION

The judgment of the Court of Appeals was entered on October 27, 1952 (R. 62). The peti-

tion for a writ of certiorari was filed on December 9, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence supported the District Court's finding that a finance company seeking remission of forfeiture knew that the husband of the nominal purchaser of a truck was the true owner.

STATUTE INVOLVED

18 U.S.C. 3617 provides in pertinent part as follows:

> *Remission or mitigation of forfeitures under liquor laws; possession pending trial—(a) Jurisdiction of court.*
>
> Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.
>
> *(b) Conditions precedent to remission or mitigation.*
>
> In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or air-

craft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

STATEMENT

On July 6, 1951, the Government filed a libel of seizure and forfeiture against one 1951 Ford pick-up ¾-ton truck, alleging that it had been used in the removal, deposit, and concealment of untaxed distilled spirits, and in connection with the operation of an illicit distillery (R. 2-4). The present petitioner, the Hammonton Investment and Mortgage Company, petitioned for a remission of the forfeiture, alleging that it was the owner of the forfeited truck as the assignee of a conditional sales contract; that it had conducted an investigation of the character and moral responsibility of the purchaser for whom it was financing the truck and found it to be good; and that the seizure was incurred without wilful negligence or intent to defraud the revenue on the part of the petitioner (R. 6-10). After a trial without a jury, the court denied the petition (R. 56-57), and rendered Findings of Fact and Conclusions of Law in accordance therewith (R. 52-56). On appeal to the Court of Appeals for the Third Circuit, the order of the District Court was affirmed (R. 62).

There is no question here involved as to the legality of the seizure and forfeiture of the truck. The sole question presented concerns the remission of the forfeiture by the court. The evidence bearing on the denial of remission may be summarized as follows:

About a week prior to April 1951, Thomas J. Marks told a salesman of the Hy-Way Motor Service that he wanted a ¾-ton pick-up truck as soon as possible. When the truck arrived about a week later, Marks told the salesman that he wanted to finance it, and gave the salesman the necessary information. (R. 20-22.)

The salesman had the required forms, but Marks indicated that it was his wife, Thelma Marks, who would sign them. They then went over to Marks' house where Thelma Marks signed the papers (R. 22-23), including a conditional sale contract (Ex. P-1, R. 45-46). Marks himself paid the down payment of one-third of the purchase price (R. 23), and the sales contract provided that the deferred balance would be paid in twenty-four monthly installments (Ex. P-1). The conditional sale contract was assigned that same day to the petitioner for financing (R. 46).

On April 5, 1951, the same day that Thelma Marks executed the papers (Ex. P-2, R. 47-48), one Rosetti, an investigator for the petitioner, went out to Marks' farm where he talked with Thelma Marks, in her husband's absence (R. 29). He also talked with a credit reference given by the Marks, and with persons in the vicinity of the Marks' house (R. 30-36). He did not, however, make any inquiry of the chief of police (R. 32), or the Federal Alcoholic Tax Unit, or the sheriff of Atlantic County, or his office (R. 33). Rosetti

testified that he did not as a rule check with the authorities unless something caused him to suspect a particular applicant (R. 33); and he indicated in his report to his company that his reliance in this instance had been on what neighbors had told him (Ex. P-4, R. 51). He could not remember whether he inquired about both the Marks, or just Thelma Marks (R. 30-31). He executed an investigation report dated April 5, 1951 (Ex. P-3, R. 49) in which he indicated, *inter alia,* that Thelma Marks was a housewife with six dependents and that her only source of income was from her husband. The form indicates under a space marked "Full business address," the notation "hauling." He also executed a commodity report the next day (Ex. P-4, R. 51) in which he indicated that Thelma Marks was a housewife, that she and her husband were in the hauling business, and that her husband owned or was buying the property where they resided. This report states: "Also determined they have lived in this vicinity for a number of years and have never been in any serious trouble."

The Government introduced into evidence the record of the United States Department of Justice relating to Thomas Marks (Ex. G-1, R. 38-39, 54), which indicated that he had a long record of violations of the federal liquor laws, that he had been convicted and sentenced on several occasions between 1939 and 1945 for federal liquor law viola-

tions, that he had violated his probation on other occasions by similar violations, and that at the time of the sale of the truck he was on probation for violation of the federal liquor laws.

The District Court in its findings of fact noted that Mrs. Marks had no outside employment or income, and that such facts were known by the Hy-Way Motor Service and petitioner at the time of the sale of the vehicle and at the time the lien arose (R. 53-54). It concluded (R. 56):

> 3. Since Thomas J. Marks had such a record for violating the Federal laws relating to liquor at the time of the sale of the vehicle at the time the lienor acquired its lien and the wife in whom paper title was placed had no income except that from her husband, Thomas J. Marks, and since no inquiry was made concerning such record of any of the law enforcement officials as required by statute in such cases, the petition must be denied.

ARGUMENT

Petitioner's argument that the available facts "at no time indicated to petitioner circumstances which would lead it, as a 'reasonably prudent law-abiding person' to make further investigation of the husband" (Pet. 7) is merely an attempt to re-argue the factual issues resolved by the trial judge. The trial judge found that petitioner did have reason to know that the husband was "the true

purchaser and owner of the vehicle" (R. 55), and, as the court below stated, such finding was based on "ample evidence" (R. 60). The cases cited by petitioner as being in conflict with the decision below (*United States* v. *One Ford Coach,* 307 U.S. 219; *United States* v. *One 1938 Model Chevrolet Coach,* 106 F. 2d 985 (C.A. 5)) present no conflict because the courts there found that in the circumstances the claimants in those cases were not put on notice of the existence of an undisclosed principal.

On the basis of the factual finding that petitioner actually knew that the husband was the true purchaser, it is clear that remission was properly denied, since no inquiry was made at the headquarters of the sheriff, the chief of police, or the federal law enforcement agencies enumerated in 18 U.S.C. 3617(b)(3), *supra,* p. 3. *Aetna Finance Company* v. *United States,* 191 F. 2d 63 (C.A. 10); *Kinston Auto Finance Company* v. *United States,* 182 F. 2d 543 (C.A. 4); *United States* v. *One 1939 Model De Soto Coupe,* 119 F. 2d 516 (C.A. 10). The inquiries made of the neighbors certainly were not sufficient compliance with the statutory conditions for remission. Inquiry must be made both as to one's "record" and "reputation," and "reputation" as used in the statute means the reputation among law-enforcement officers rather than a general reputation among the people in the com-

munity. *Manufacturers Acceptance Corp.* v. *United States,* 193 F. 2d 622, 624 (C.A. 6).[1]

CONCLUSION

The decision below is correct and no conflict of decision is involved. It is respectfully submitted that the petition for a writ of certiorari should be denied.

WALTER J. CUMMINGS, JR.,
Solicitor General.

CHARLES B. MURRAY,
Assistant Attorney General.

BEATRICE ROSENBERG,
CARL H. IMLAY,
Attorneys.

JANUARY 1953.

[1] The suggestion that inquiry would have been unavailing since "it appears that whatever Thomas J. Marks' record or reputation was, it was not known to the local police chief" (Pet. 10) is patently frivolous, for inquiry of the federal officers designated in the statute would have revealed the record.

☆U.S. GOVERNMENT PRINTING OFFICE 1953—236846/P.O.930